

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JESUS IXTRA-SALAZAR,**

**Defendant.**

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**CASE NO. 8:08CR326**

**ORDER**

This matter is before the Court on the Defendant's Notice of Appeal, ECF No. 214, and the Clerk's Memorandum for determination of the Defendant's right to appeal in forma pauperis, ECF No. 215. The Defendant seeks to appeal the Court's Order, ECF No. 213, denying his Motion for Return of Property, ECF 209. In the Motion for Return of Property, the Defendant sought return of \$1,364.00 in United States Currency that was the subject of a forfeiture count in his Indictment, ECF No. 1. As the result of his conviction on Count I of the Indictment (conspiracy to distribute methamphetamine), the Defendant forfeited the \$1,364.00 described in Count V of the Indictment.

In his Notice of Appeal, the Defendant states that he is seeking return of the funds pursuant to Federal Rule of Criminal Procedure 41(g), which allows a person aggrieved by an unlawful search and seizure to move for the property's return. The Defendant received a trial by jury in 2008, and was found guilty on December 5, 2008. The Court held a hearing on the forfeiture counts on December 11, 2008, and the Defendant was represented by counsel. The Court made the requisite findings that the government had met its burden of demonstrating that the currency in question was subject to forfeiture. A preliminary order of forfeiture was issued with respect to the subject property on December

18, 2008. The Defendant's conviction was affirmed by the United States Court of Appeals for the Eighth Circuit, and a final order of forfeiture was issued on July 8, 2010, ECF No. 128, after the mandate was issued by the Court of Appeals.

The record does reflect the fact that the government's Motion for Final Order of Forfeiture, ECF No. 126, and declaration of publication and notice of forfeiture, ECF No. 125, were defective, in that the government misfiled documents intended for a different case. The Defendant was not prejudiced by the error, however, in that such declarations of publication and notices of forfeiture serve the purpose of ensuring that third-party interests in the subject property may be asserted.

The Defendant's attempt to appeal the final order of forfeiture issued on July 8, 2010, is untimely, and no leave to appeal in forma pauperis will be granted.

IT IS ORDERED:

1. The Defendant's Notice of Appeal, construed as a request for leave to appeal in forma pauperis, is denied; and
2. The Clerk will mail a copy of this Order to the Defendant at his last known address.

DATED this 29<sup>th</sup> day of March, 2018.

BY THE COURT:

S/Laurie Smith Camp  
Chief United States District Judge